AUTHORITIES CITED

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199 U. S. 278.

Louisville Property Company vs. Commonwealth,
146 Ky. 847 ; 143 S. W. 412.

R. C. L. Vol. 27, paragraph 58, title
"United States Courts."

R. C. L. Vol. 7, paragraph 38, title
"Courts."

Salem Trust Company vs. Manufacturers'
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THE SUPREME COURT OF THE UNITED STATES

BLACK AND WHITE TAXICAB & TRANSFER COMPANY, — *Appellant*

VS.

BROWN AND YELLOW TAXICAB & TRANSFER COMPANY, — *Appellee*

BRIEF FOR APPELLEE

MAY IT PLEASE THE COURT:

The decision of the Circuit Court of Appeals, Sixth Circuit, rendered November 5th, 1926, affirming the judgment of the District Court for the Western District of Kentucky which is found beginning on page 53 of the printed transcript, so fully sustains the contention of Appellee that we can add little that will be of assistance to this Court. We shall follow the arrangement of the brief of Appellant in support of its petition for writ of certiorari.

I. DISMISSAL OF ACTION UNDER SECTION 37 OF THE JUDICIAL CODE.

The authorities cited by counsel for Appellant do not support their position. Appellee is a Tennessee corporation, having been organized prior to the making of the contract in controversy. There had been a Kentucky corporation of the same name. It

was dissolved as required by the laws of Kentucky. A new corporation was organized under the laws of the State of Tennessee, and it took over the property formerly belonging to the Kentucky corporation. We insist that Appellee, acting in good faith, was within its rights in obtaining its charter from Tennessee, although it may have done so for the purpose of conferring on the Federal Courts jurisdiction to determine controversies which might arise between it and the citizens of Kentucky.

Counsel for Appellant appear to have entirely misconstrued the principles announced in the case of Lehigh Mining & Manufacturing Company vs. Kelly, 160 U. S. 327. That case and the cases therein cited all concur in holding that where real estate is conveyed by a corporation or citizen of another state for the sole purpose of conferring jurisdiction on the Federal Courts and the conveyance is fictitious and not real that it will not operate to confer jurisdiction. It is also held in that case, and the cases therein cited, that where the conveyance is in good faith, and not fictitious, it will confer jurisdiction. The Lehigh case, supra, and the cases therein cited, fully support the contention of Appellee and disprove entirely the contention of Appellant. The Tennessee corporation was organized in good faith and is the only corporation in existence having connection with this suit as Appellee. The Appellee is the real party in interest and not a fictitious party. It can not be said that a Kentucky corporation is the real party as there is no Kentucky corporation which is a party to this appeal.

II. Should This Court Follow the Decisions of the Kentucky Court of Appeals?

It is true that the Kentucky Court of Appeals in two cases, and probably in three, has held that a contract such as the one in controversy is invalid. As to whether the Kentucky Court of Appeals would adhere to these opinions in the face of the more recent opinions of this court, if the question should be again presented to that Court, is one of grave doubt. It was insisted in the District Court as well as the Court of Appeals by Counsel for Appellant, that the Federal courts were compelled to follow the decisions of the Kentucky Court of Appeals on questions of general law. They seem to have abandoned their contention, as we do not find in their brief the same contention made by them in the lower courts. The authorities are all against their contention if they still mean to insist upon it. We call the attention of this court to the case of Salem Trust Company vs. Manufacturers' Finance Company, 264 U. S. 182, and the cases therein cited. We also invite the attention of the Court to the general rule on this question found in Paragraph 58, Volume 27, R. C. L., under the title "United States Courts". Also to Paragraph 38, Volume 7, R. C. L., under the title "Courts".

The case of Donovan vs. Pennsylvania Railroad Company, 199 U. S. 278, decides all points raised in this suit against the contention of the Appellant, except one question of fact, which has been decided against it both by the District Court and the Circuit

Court of Appeals. This Court is, therefore, committed to the correctness of the points insisted on by Appellee. All steps taken by Appellee from the inception of this suit have been based upon the principles announced in the Donovan case.

The Kentucky Court of Appeals has said that such a contract as that in controversy in invalid. But the same Court has also held that a corporation, and particularly the Louisville & Nashville Railroad Company, one of the parties to the contract in controversy, has, in addition to its special powers, implied authority to do all acts necessary for the full and complete utilization of its special powers which are not expressly or impliedly excluded by the terms of the grant. It has been held by that court that a railroad company, as an incident to its business, has the right to engage in the operation of a hotel and other similar activities. This was so held in the case of Louisville Property Company vs. Commonwealth, 146 Ky. 847 ; 143 S. W. 412. The Court of Appeals of Kentucky in that case recognizes that a railroad company, aside from the transportation of freight and passengers, may use its individual property as it pleases so as to make money for itself. In this respect that decision is in harmony with the decision in the Donovan case, supra. If a railroad company, aside from its transportation business, which may be regulated by law, should be deprived of the right to use its private property as an individual might use his private property, it would be to deprive it of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the

United States. It is by reason of the implied authority which a railroad company has to use its private property as it pleases when the use does not relate to its transportation business, that it may rent part of its depot and building for news stands, restaurants, barber shops, and other like conveniences. If it may do this, it may lease to a taxicab company its grounds so that the employees of such company may come thereon and solicit business. It has the authority to keep off of its premises any person not having any business with the railroad company who desires to use the property of the railroad company for his own personal gain.

If these principles are sound, and they have been recognized as sound by this Court, and impliedly by the Kentucky Court of Appeals in the case last cited from that court, it follows that the contention of Appellee is correct. And the railroad could not be deprived of its authority to enter into the contract in controversy without also depriving it of rights guaranteed by the Constitution of the United States and amendments thereto.

III. Is Contract in Excess of the Charter of the Railroad Company?

We do not follow the reasoning of counsel for Appellant on this point. Certainly there is nothing in the authorities which they cite to support them. The charter of the Louisville & Nashville Railroad Company is a private act of the Legislature of Kentucky, and courts do not take judicial knowledge of private acts but they must be proven as any other fact. That the Louisville and Nashville Railroad

Company does have an implied authority under its charter to enter into contracts such as the one in controversy is established by the opinion in the case of Louisville Property Company against Commonwealth, supra.

IV. The Contract is not Violative of Section 214, Kentucky Constitution.

Section 214, Kentucky Constitution, has no application to this case. The Court of Appeals of Kentucky has had similar contracts before it and in no opinion has that court held or intimated that Section 214, Kentucky Constitution, has any bearing on such a contract. Section 214 prohibits the making of preferential contracts relating to the conduct of its business as a common carrier. The contract entered into between Appellee and the Louisville & Nashville Railroad Company was not made by the railroad company for the conduct of its business as a common carrier. The Circuit Court of Appeals answered the argument of Appellant in a way satisfactory to us, and we can add nothing to what is found in that opinion. The contract in controversy was entered into by the railroad company under its implied authority as determined in the Louisville Property Company case, supra. The authorities cited by counsel for Appellant on this point, that is, the Stockyards cases, show conclusively that Section 214 of the Constitution did not mean what Appellant now contends should be the construction of it. We concede that a railroad company can not make a preferential contract relating to its transportation business, and that is all that the authorities relied on by Appellant hold.

V. WAS EXTENDING INJUNCTION TO CURD STREET ERROR?

This is a question of fact decided adversely to Appellant by the District Court and by the Court of Appeals. The point is well disposed of by the opinion of the Circuit Court of Appeals. No right is denied Appellant by the injunction in so far as it relates to Curd Street.

VI. CONCLUSION

In the conclusion of their brief counsel for Appellant quote and rely upon Section 202 of the Constitution of Kentucky. There is no discrimination in favor of domestic corporations or in favor of foreign corporations involved in the contract in controversy. A foreign corporation would have the same rights in the State Courts that a domestic corporation would have, and a domestic corporation would have the same rights in the Federal Courts that a foreign corporation would have. They are on an exact equality. If one goes to the State Courts and another to the Federal Courts, the result of the litigation may be different but it is not because one is a domestic corporation and the other a foreign corporation.

Respectfully submitted,

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